In his book, Lane reveals documents held back under public interest immunity regulations that give details of Vincent's conversations with one of the key investigating officers, who would himself end up behind bars. Vincent was acquitted of the Magill killing, but he and Smith were back in court for murder in 2005 and were jailed for life. They were convicted of killing David King, who was suspected of being a police informer. Lane highlights the similarity of the two killings. "In the Magill murder a witness describes one of the men brazenly smiling as he drove away from the scene. In the King murder, a witness refers to one of the killers 'waving a salute' in her direction as he changed vehicle," he writes. Both Vincent and Smith deny any involvement in the Magill murder.

Lane goes into great detail about the detective in the case, DS Chris Spackman. Lane claims that in a previous confrontation, when Lane was 21, he had met Spackman when he was briefly arrested in connection with a car-ringing operation. While in a police cell, Lane alleges Spackman came in and told him: "You think you're the daddy of this lot, don't you?" Spackman was jailed at the Old Bailey in 2003 for plotting to steal £160,000 from Hertfordshire police, money that had been seized from criminals. Spackman, who admitted conspiracy to steal, theft and misconduct in office, was the officer handling disclosure information in Lane's case. The judge sentencing Spackman remarked that "this was no fiddling of expenses, but was more suited to a seasoned fraudster who could conduct complicated deceptions in a police environment". Spackman's involvement in another case, involving cloned credit cards, led to the successful appeal of the two men convicted.

Robert Evans, counsel for the two men in that case told the court: "In my opinion, Mr Spackman's accounts in interview show a history of dishonesty and a history of tampering or falsifying police records in cases he was involved in." Lane notes that at his own trialone of the detectives told the court that "he is an extremely dangerous man who has undoubtedly committed other murders" although he had never been charged with any others Lane has always proclaimed his innocence despite the fact that this inevitably slows down the possibility of release as a prisoner is deemed not to have come to terms with his offence. His case was initially covered in the Guardian in 2001 and was later the subject of a short film as part of the Guardian's Justice on Trial series.

He was released in 2015 but returned to jail last year after his arrest on a common assault charge unconnected to the case. A parole hearing is due in March. In his book, Lane acknowledges previous offences which landed him behind bars as a young man but is adamant that he is innocent of the Magill murder. He is scathing about the possibility that any professional hitman would use the battered old BMW car he was alleged to have used. "Wouldn't it be simply unbelievable that I'd choose a car I had been driving my family about in just a few days before?" His young son's fingerprints were also found in the car. In the book, Lane quotes everyone from Voltaire to Hunter S Thompson to Juvenal and is also revealing on the state of prisons today. "The Covid-19 crisis has reported concerns for the public's mental health due to being housebound," he notes. "Really! I think to myself what do they think being locked up in a concrete coffin for years and years does to a person?"

Serving Prisoners Supported by MOJUK: Derek Patterson, Walib Habid, Giovanni Di Stefano, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Robert Knapp, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Peter Hannigan.

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MOJUK: Newsletter 'Inside Out' No 832 (03/02/2021) - Cost £1

New 'Stop and Search' Powers Will 'Further Criminalise' the Young

Zoe Darling, Justce Gap: Under new powers, police will be able to stop and search people previously convicted of knife-crime offences without a reason. The powers are embedded within the Police, Crime, Sentencing & Courts Bill, which will go before MPs in a matter of weeks.vUnder the proposals, courts will be expected to impose Serious Violence Reduction Orders (SVROs) on anyone over 18 with a knife or weapon related conviction unless there is a 'compelling' reason not to. Police will then be granted powers to stop and search anyone subjected to an SVRO, regardless of whether or not they believe them to be carrying a weapon. The proposed regime marks a significant departure from existing stop and search powers, all of which require police officers to have formed some sort of suspicion as a basis for the search. The most commonly used power, under the Police and Criminal Evidence Act 1984, requires 'reasonable grounds' for suspicion. Other stop and search provisions, such as section 60 of the Criminal Justice and Public Order Act 1994, limits the exercise of the power to officers of a certain rank. In contrast, the new powers can be exercised by officers of any level, and do not require prior authorisation by a more senior officer.

Kevin Blowe of the Network for Police Monitoring (Netpol) said that the proposals risk 'creating a class of people who are treated as "permanent criminals" – or who are regularly misidentified as such'. 'It also risks further criminalising vulnerable young people who are coerced into crime,' he added.vNewly retired Chief Executive of the College of Policing Mike Cunningham has voiced his concern that existing stop and search powers disproportionately affect Black communities to an 'eye-watering' degree. 'It is absolutely starkly clear that there is a widespread dissatisfaction with policing from black people', he told The Guardian. 'I don't think anybody should try to dress that up and say, "it isn't real, it's a mistake, it's a perception". Something more needs to be done.' Recent figures show that black people are nine times more likely than their white counterparts to be stopped and searched, and three times more likely to be detained. Rights campaigners believe that the new legislation will compound existing inequalities in policing, and that the evidence underpinning the proposed measures is flimsy. Home Secretary Priti Patel has denounced claims that the new powers will disproportionately target black and minority communities as 'simply not true', adding that 'the Government's number one job is to keep our people safe.'

Landmark Hearing to Examine Handling of Domestic Abuse Cases by UK Courts

Hannah Summers, Guardian: A landmark hearing in the court of appeal is under way to examine how cases of domestic abuse are handled by judges in the family courts. It concerns four conjoined appeals which feature allegations including marital or partner rape and coercive control, which emerged during private proceedings to address disputes centred on access to children. The appeals have been brought by mothers who have made serious claims against the fathers of their children, and challenge the decisions made by circuit judges at the family courts during the last 18 months. Two of the cases relate to decisions by Judge Robin Tolson, who was criticised last year by a more senior judge based in the Family Division of the high court over his handling of rape allegations. Ms Justice Russell upheld a woman's

appeal after she complained Tolson had deduced she could not have been raped because she took “no physical steps” to stop her assailant. Barrister Christopher Hames QC, representing one of the four women, says his client is challenging Tolson’s decision to make “absolutely no findings” in respect of her “myriad of allegations”, including complaints of non-consensual sex, coercive control and that her partner “slapped her hard” when she was heavily pregnant.

The court of appeal heard how the mother had had an on-off relationship with her ex-partner, who had wrongfully retained their child at his home overseas after the mother had left them there for a visit. Hames said Judge Tolson ignored an important admission by the father that on a few occasions he used physical violence. He told the court of appeal on Tuesday that Tolson had found the father’s account to be consistent, despite police evidence to the contrary. Hames asserted that Tolson’s reference to the mother’s mental health issues as her “demons” flavoured his entire approach to her and her evidence. He said: “It was clear the judge was not keeping an open mind about the allegations the mother made. He didn’t analyse the evidence appropriately at all. He failed to take a holistic evaluation of all the evidence before him.” Hames said Tolson had wrongfully placed emphasis on the fact the alleged non-consensual sex preceded “many other occasions of consensual sex” and the decision by the mother to leave the child abroad with the father. “It should not be taken that just because a woman has consented to sex in the past that she should be taken as consenting every time … I would have hoped that this is an assumption long assigned to the judicial dustbin.”

The appeal raised issues of how claims of coercive and controlling behaviour are handled in the family courts. “In this appeal, as in other cases, the real question is not limited to what happened, but whether those events were abuse themselves and/or whether there is sufficient evidence of patterns of behaviour which is demonstrative of an abusive relationship,” Hames told appeal judges Sir Andrew McFarlane, Lady King and Lord Holroyde in a written case outline. Hames said Tolson had commented that incidents of note were “insignificant in themselves” and ignored that victims of abuse do not always recognise themselves as victims and as a result may not report abuse to the authorities.

On behalf of the respondent, barrister Janet Bazley QC highlighted “extravagant claims” made by the mother including that the father had a personality disorder and that one of his older children was a risk to their child. Bazley said Tolson had concluded it was impossible to reconcile sending a very young child to live with their father for an extended period with her claims and concerns about the father’s ability to provide adequate care.

The court also heard that the mother had told psychiatrists the father was a “good man and not abusive”. Barrister Amanda Weston QC, who is representing a second woman challenging a ruling by Tolson, said he had been wrong to find her client’s allegation of rape “deeply unconvincing” because she had had consensual intercourse with the father on other occasions. “The judge failed to consider the rape allegations in the context of a pattern of coercive control,” she said in a written outline of the case. The judge was wrong to find the mother’s case ‘weakened’ because she did not conform to his stereotype of the ideal victim, as she delayed in reporting the allegations.”

Charlotte Proudman, one of the mother’s lawyers, told the Guardian: “These appeals show the need to update how family courts approach cases involving rape, domestic abuse and coercive control. All too often we see outdated attitudes towards wider domestic abuse, which could leave parents and children at risk of harm. It’s been two decades since the family courts have looked at these issues and these landmark appeals couldn’t be more timely.”

A report by the Ministry of Justice published last year warned that “rape myths” can be

Criminality - in the Eyes of Immigration Officials, a Stain That Won’t Wash Out

Kingsley Napley, Lexology: We all make mistakes - but some people make very big mistakes and end up breaking the law. Mercifully legislation allows for debts repaid to society to be forgotten through a rehabilitation law, whereby certain criminal convictions can become ‘spent’ after a period of time. However, when it comes to foreign nationals wishing to enter or stay in the UK, rehabilitation provisions are almost non-existent; furthermore the threshold at which immigration authorities can deny someone entry or permission to stay has recently been lowered. The UK’s Immigration Rules include general grounds for refusal which most immigration applications must not fall foul of – the general grounds are divided between mandatory and discretionary grounds, under which applications must or may be refused respectively. The general grounds now also apply to most EEA nationals wishing to enter the UK.

Amongst the mandatory grounds for refusal, an application must be refused if the applicant has received a custodial sentence of 12 months or more regardless of when the sentence was issued - potentially precluding individuals who may have committed an offence many, many years ago from being able to come to the UK. Without qualification of the thresholds, applications must also be refused where the applicant is a persistent offender who shows a particular disregard for the law or has committed a criminal offence which caused serious harm. Previously custodial sentences of 4 years or longer, or sentences between 12 months and 4 years received in the last 10 years, would result in a mandatory refusal. Some jurisdictions may have comparatively strict sentencing laws, so that an offence that might receive a shorter custodial sentence or none at all in the UK nevertheless results in a substantial period of imprisonment.

Immigration officials do have a very limited discretion to grant permission to enter or to remain when a person’s application falls for refusal on the general grounds, but in instances of criminality convincing an immigration officer to exercise discretion can be very difficult. The lack of flexibility in the Rules and current guidance appears to be unfair and fails to account for the passage of time and the circumstances of offences. The fact rough sleeping is now a discretionary ground for refusal further shows the harsh standpoint currently taken. It is questionable what public policy is served by denying entry or refusing visas to an individual who may have committed a relatively minor offence, potentially decades ago, and who cannot reasonably be described as representing a risk to the UK or the public. It appears that reformed characters are simply not accommodated for under the current law

Kevin Lane Publishes Book in Hope of Overturning Murder Conviction

Duncan Campbell, Guardian: A man serving a life sentence for a controversial hitman murder committed nearly 30 years ago has taken the unusual step of publishing a book from inside prison with fresh evidence he hopes will lead to his conviction being overturned. With his book titled Fitted Up and Fighting Back, Kevin Lane believes he can finally prove his innocence of the contract shooting of Robert Magill in Hertfordshire in 1994. Lane, now 53, was convicted after two trials on a majority verdict of murdering Magill, who had been out walking his dog in Rickmansworth. Witnesses saw two masked men fleeing the scene in a red BMW after shooting Magill, who was known to have a number of enemies because of his involvement in protection rackets. The BMW car allegedly used as the getaway vehicle was traced, and one of Lane’s palm prints was found on a bin-liner in the boot. Within hours of the shooting the names of two men, Roger Vincent and David Smith, were being spoken of as those responsible. The following year Vincent and Lane were charged with the murder but Vincent was acquitted at the subsequent trial.

that black people are twice as likely as white people in the UK to die in custody. Of those deaths in custody, the use of force is a feature in more than twice as many cases as other deaths in custody. "Through an analysis of our casework, Inquest has identified that the racial stereotype of 'big, black and dangerous', 'violent' and 'volatile' when woven into the culture and practice of the police has been a recurring feature of deaths involving the use of force and restraint by police in the UK," adds the submission. Deborah Coles, director of Inquest, said: "The UK claims transparency for its law enforcement and legal processes but our work tells a different story. We see a repetition of deaths of black people in police custody, raising concerns about structural racism, state violence, neglect and impunity." Coles said she hoped the eventual UN report would make concrete recommendations to the UK. The Met said that a senior officer had apologised for the failure to notify Clarke's family of the misconduct meeting.

Scottish CCRC Refer Convictions of David Pugh, Kevin Kane and Brian Meighan

Jamie McKenzie, The Scotsman: SCCRC has referred the cases of David Pugh, Kevin Kane and Brian Meighan - known as the "Fernieside Three" - to the High Court of Justiciary Scotlandand a statement of reasons has been sent to the High Court, Lord Advocate and Crown Office. All three were convicted after trial of detaining a woman against her will and raping her in an Edinburgh tower block in 2000, with the Crown Office relying on evidence from a forensice examiner at trial in respect of injuries to the complainer.

They were each sentenced to six years in jail and released on licence in 2004. Initial appeals were refused in June 2002, and in 2004 the SCCRC refused to consider referring their cases back to the High Court. They also called for a judicial review to challenge the commission's refusal and this was turned down in July 2006. In April 2019, Pugh applied again to the commission, relying upon fresh evidence in the form of three experts which refuted the opinion evidence given by the forensic medical examiner at trial. Given the grounds to be reviewed were common to the co-accused, Meighan and Kane, they also applied to have their convictions reviewed in September 2020.

The SCCRC has now decided to refer the applicants' convictions to the High Court of Justiciary. The SCCRC considers the fresh evidence now available, which arises from research and developments in medical science since the time of original conviction, is of a "kind and quality" which was likely to have been of "material assistance" to the jury in its consideration of the critical issue of consent, and there "may have been a miscarraige of justice." The details were revealed on Friday 22nd January 2021, in a statement released by the Scottish Government on behalf of the SCCRC.

'Lured into trio's flat': The young mother said she was lured into a 14th-floor flat in Little France House. She told the High Court in Edinburgh in 2000 that she had been looking for a friend in Craigour Place at the time. When outside she called for her friend but got no reply and said she heard someone from the block of flats ask who she was looking for. The woman said she was told the friend she was seeking was in the flat where she found three strangers – Meighan, Kane and Pugh. The woman, 21 at the time, said she was worried and tried to leave but was pushed into the bedroom and attacked. Medical evidence was later produced which was claimed to show injuries consistent with sexual assault.

But the trio claimed the rape victim was allowed to alter her 14-page police statement regarding where the attack was said to have taken place, changing it from the stariwell of a high-rise to one of the accused's flats. The men also claimed police officers failed to test the woman for drug use and tried to suppress CCTV evidence. They insist the victim consented to group sex, and twice turned down the chance of parole by refusing to change their pleas to guilty.

applied in the family jurisdiction to undermine a woman's credibility. Two further women have challenged rulings by other judges – Judge Jane Evans-Gordon and Judge Richard Scarratt. No findings of abuse had been made against any of the men involved and each of them opposes the appeals. It is anticipated appeal judges will not only decide whether or not to uphold or reject the appeals – but may also issue new guidance to family court judges based on the findings.

Prison Service Failures to Support Young Adults Put Society at Risk

HM Inspectorate of Prisons: The Prison Service has failed for more than a decade to deal effectively with young adult prisoners, missing opportunities to help them rehabilitate and putting communities at risk from reoffending, according to HM Chief Inspector of Prisons. Charlie Taylor warned that outcomes would remain poor for young adults under 25 and for society unless HM Prison and Probation Service (HMPPS) urgently addressed the current "haphazard" approach to more than 15,000 young adult prisoners. Mr Taylor has published a thematic report, Outcomes for young adults in custody. The report concludes that HMPPS places most young adults in adult prisons without any coherent strategy and with little understanding of the way young men in their early 20s mature. The Chief Inspector recalled the comments, in a report published in 2006 about young adults, from the former Chief Inspector, Dame Anne Owers. She warned then: "What will not work is simply to decant young adults into the mainstream adult prison population. That will not provide environments that meet standards of safety and decency – or, crucially, that are able to make a real difference to reducing reoffending among this age group."

Mr Taylor said: "It is disappointing that this warning was ignored, and we now have a system where nearly all young adults have simply been placed into mainstream establishments, which have neither the resources nor the interventions to meet their needs. The vast majority of prisoners aged between 18 and 25 are held in adult prisons. The report notes: "Young adults were placed haphazardly in a range of different types of establishment without considering their needs." It also cites evidence that maturation in young adults is a slow process and may not be achieved until their mid-to-late 20s. In general, the outcomes are poor for young adults when compared with those for older prisoners (those aged over 25). Young adults have worse relationships with staff, are less likely to be motivated by the behaviour management schemes and are far more likely to be involved in violent incidents. They are also more likely to face adjudications (prison discipline processes), to be placed on the basic regime and to self-harm. They report more negatively on day-to-day life, including relationships with staff, the quality of the food and the cleanliness of their wing. In addition, young adults have worse attendance at education and work. Black and minority ethnic prisoners are significantly over-represented in the young adult prison population, and the perceptions of treatment among this group are particularly poor."

Mr Taylor said custody should be an opportunity to provide them with structure, meaningful activity and opportunities to address their offending behaviour. "However, in HMI Prisons' prisoner surveys less than half of young adults (46%) reported that their experience in their current prison had made them less likely to offend in the future. This missed opportunity to help young adult prisoners to improve their skills and reduce reoffending rates has consequences for society when they are released." The report found that where young adults were well-supported it was usually as a result of enthusiastic work by individual members of staff. Overall, though, Mr Taylor said:

"There is a lack of a coherent response at the national level. There is no explanation for the current configuration of the (prison) estate, with only three dedicated young adult establishments for a population of over 15,000, no rationale for placing the majority of young adults in estab-

lishments that predominantly hold older prisoners and no evidence that placement decisions are made on the basis of need." A different approach was needed, Mr Taylor said. The report identified "specific, properly resourced young adult provision" at Hydebank Wood Secure College, Northern Ireland, as an example of what might be achieved. As the Prison Service plans for recovery from the COVID-19 pandemic, Mr Taylor said, there is both an opportunity and an urgent need to develop specific policies and services for this group. "If action is not taken, outcomes for this group and society will remain poor for the next decade and beyond."

Women Prostituted as Teenagers to Challenge the Retention of Criminal Records

Jon Robins, Justice Gap: Jon Robins, Justice Gap:A legal challenge begins of the policy requiring the retention of all criminal convictions until a person reaches 100 years of age. The women bringing the challenge were forced into prostitution as teenagers and have multiple criminal convictions for soliciting and loitering. They had previously won a legal challenge of the operation of the Disclosure and Barring Scheme which required them to disclose these records to employers and others (R(QSA and ors) v Secretary of State for the Home Dept [2018] EWHC 639 (Admin)). They are no longer required to show these records of their abuse and exploitation from many years back. However, the National Police Chief Council's policy on deleting records requiring records to be held until the offender reaches the age of 100. This is despite the fact that many of the convictions would no longer be classed as a crime because the offence of soliciting and loitering was amended to exclude children under the Street Offences Act 1959.

The case which is being brought by the Centre for Women's Justice against the Secretary of State for the Home Department. Information on the PNC is available to a wide range of public bodies and some private organisations, as well as to the police, CPS and courts. It can also be accessed by the Royal Mail, trading standards and credit checking organisations. 'As a consequence of meeting a dangerous pimp when I was only 15 who forced me to sell sex for money, by the age of 17 I had 39 convictions for soliciting and loitering,' commented Fiona Broadfoot, one of the women bringing the claim. 'Despite escaping prostitution over thirty years ago, I am horrified that these records of my abuse and exploitation will be retained for another 50 years and be made available to so many agencies.' 'Why should I continue to be judged and stigmatised so many years after I got away from the hellish life I entered as a teenager?' said 'Sam', one of the women providing. Harriet Wistrich, solicitor for the Claimants said: 'What possible justification can there be for keeping such deeply personal, sensitive information on the PNC, particularly where our understanding of prostitution offences has moved forward so far and the women concerned would now be regarded as victims not criminals.'

Should Lawyers be Held to Higher Standards

Benjamin Bestgen considers the fairness of the high standards to which we hold lawyers. Read last week's jurisprudential primer here. The legal profession is a deeply human one and humans are complex creatures. As a species we are capable of extraordinary feats of courage, intellect, wisdom, kindness and good judgement but also equally extraordinary callousness, depravity, greed, violence and stupidity. Most of us probably fall in the ordinary middle: we aren't saints nor villains but embody a mix of good, bad and ugly traits, many of which aren't easily judged objectively: a hardworking, intelligent and outspoken colleague may also be described as an insufferable careerist know-it-all who makes others look bad. A fun social networker appears as untrustworthy gossip to others. One person's incorrigible flirt is another's creepy sex-pest. But what about situations where we need

sate for the reduction in fee income by taking more cases and working longer hours, leading to a stressful and last-minute working culture. 4) Processes at the Legal Aid Agency (LAA) feel obtuse and complicated. There is a widespread perception of a "culture of refusal" at the LAA. 5) Unsustainability for barristers coming in at the junior end, and problems with retention and career development, particularly from those without independent financial means.

Chair of the Bar Council, Derek Sweeting QC said: "Our report finds a civil legal aid system running on an empty tank, kept going by nothing more than the goodwill of the legal profession. This is not a sustainable way to guarantee the future of such an essential service for the public. "The Bar Council has consistently called for a reversal of LASPO, which took many areas of legal aid funding out of scope. Eight years later, we continue to see its damaging effects. We now find ourselves pleading for the bare minimum. We urge the Government to heed the findings of this report and seek to meet the Bar's commitment to social duty and access to justice with some proper investment in, and respect for, the justice system.

Met Police Officer Faces New Hearing Over Death of Mentally ill Kevin Clark

Mark Townsend, Guardian: A senior police officer cleared of misconduct over the high-profile death of a mentally ill black man is to face fresh disciplinary proceedings because of failings in the original case, the Observer can reveal. After a misconduct meeting last year the officer – who has not been named – was told they had "no case to answer" over the death of Kevin Clarke, who was restrained by up to seven officers in south London in 2018. Clarke's family and the Independent Office for Police Conduct (IOPC) were, however, not notified about the hearing, where they would have been legally entitled to ask questions. Now the officer – after initially refusing – has signed an order agreeing to have the high court quash the original verdict, paving the way for fresh disciplinary proceedings.

Clarke, 35, who was diagnosed with paranoid schizophrenia as a teenager, had been observed by police officers for 13 minutes while suffering a mental health episode as he lay on playing fields in Catford, south-east London. When he attempted to get to his knees he was restrained and handcuffed. Police video reveals Clarke repeatedly told officers: "I can't breathe." An ambulance was called and Clarke was pronounced dead shortly after arriving at Lewisham hospital. An inquest verdict last October concluded the decision to restrain Clarke was inappropriate and contributed to his death. Cyrilia Davies Knight, solicitor for the Clarke family, said: "The family are pleased that the misconduct meeting will now take place again allowing them the opportunity to exercise their right to be present and ask questions. "But it was outrageous that the officer initially disputed the application to quash the misconduct decision, despite knowing there was a clear breach in the regulations." His family also want other officers involved in the restraint of Clarke to face misconduct proceedings, saying they were "shocked and dismayed" this had not happened despite the evidence that emerged during the inquest.

The development in the Clarke case coincides with a submission of evidence into the UN's investigation into "systemic racism" and rights violations committed by police against black people. Launched in the aftermath of the killing of George Floyd in Minneapolis, the submission by the charity Inquest argues that entrenched issues of racism and policing are also evident in the UK. Clarke's case is among a number, it says, that demonstrate law enforcement's negative stereotyping of black people, noting that Clarke had displayed no signs of aggression towards officers who restrained him for 33 minutes.

The 22-page document refers to a recent survey that found 85% of black people in the UK did not believe they would be treated the same way by police as a white person. Recent figures reveal that 7.7% of prisoners in England and Wales are black, despite being 3.4% of the population, and

titioners treat children of different ethnic communities. The researchers controlled for the practitioner assessments of the children in the study. These assessments are done by youth justice staff who interview any child at risk of getting a criminal sanction, gather information about them and the offence, and make a judgment about the risk that child will reoffend and/or cause serious harm to others. And make an assessment of the child's safety and wellbeing. Even controlling for all the other factors (including the seriousness of the offence), practitioners were likely to score children from ethnic minorities more highly. Black children were assessed as having a higher likelihood of reoffending and of creating serious harm. They were also assessed as less safe.

Unfortunately these risk assessments form the basis of YOT recommendations as to whether a child should be diverted from prosecution or what sentence they should receive. Courts usually follow YOT advice. So if a black boy is assessed as at serious risk of reoffending, the boy is more likely to be imprisoned on remand, more likely to be prosecuted and to get a harsher sentence. The research doesn't say whether the practitioner assessment is right or wrong: "both remand decisions and legal outcomes are affected by practitioner assessments. Differences in practitioner assessments of vulnerability and risk might reflect biases in judgement or actual societal differences in circumstances and wellbeing between children of different ethnicities". Assessment of children's risk of reoffending is notoriously unreliable, whatever the ethnicity of the child. So it's sad that outcomes for black and mixed ethnicity children should be dependent on such (possibly biased) assessments.

This report answers a key question, but begs many others, such as why practitioners assess black children as more risky and dangerous. We do need more research, but we shouldn't wait for results before we act. As David Lammy said, "explain or reform". We should encourage all police, judges, lawyers, social workers and YOT staff to acknowledge this disparity and address any bias in the system. Unconscious bias training doesn't work, but there are other ways of addressing and reducing bias. And it's not just about unfairness. Bias breeds mistrust and mistrust undermines the rule of law.

Running on Empty: Civil Legal Aid System

Bar Council: A newly published report "Running on Empty" from the Bar Council, which represents all barristers in England and Wales, reveals the severity of problems in the civil legal aid system. The report, which is based on a series of interviews with barristers and clerks, finds that the role of a barrister, in a climate of underfunding of public services, has been forced to stand in for roles that should have been done by other public services. One participant who works on inquests described the role as "you are half social worker, half handler, part counsellor and then advocate." Civil legal aid barristers, as outlined in the report, can feel underappreciated, but to feel attacked by government, as they recently have, is a new and worrying development. One interviewee said: "I think they, the government, does literally see those who practice in legal aid as just a thorn in their side, and they even seek to undermine them by calling them "activist" lawyers, the lawyers who are representing people and defending their rights in a politically sensitive area."

Key findings: 1) There is a serious problem with inequality of arms when it comes to bereaved families being represented at inquests. A bereaved family is likely to be represented by one junior barrister who, despite best efforts, has not had the time or resource to fully familiarise themselves with the background, get to know the family, investigate the case, and is in court facing a number of more senior practitioners representing state agencies. 2) The widespread closures of advice centres and high street solicitors, and increased pressure on those that remain, have seriously impacted the Bar. 3) Practitioners are having to compen-

greater assurances that a person actually embodies certain character traits important to their role? What about positions where who you are as a person, your private conduct and how you are publicly perceived are not easily separated from your job or office?

Lawyers and particularly judges inhabit such demanding positions – let's look at two examples. 1. As widely publicised, US Supreme Court Justice Brett Kavanaugh's appointment to the court was one of the most dubious and contested in US history. Kavanaugh was accused of sexual assault and inappropriate behaviour towards women, allegations he denies. Kavanaugh was additionally characterised by over 2,400 law professors as biased and lacking the required impartiality and temperament to be a Supreme Court judge. He dismissed his critics as politically motivated, issued blanket denials and relied on Trumpian Republican senators to confirm him to the court. 2. Likewise a matter of public record, newly appointed Irish Supreme Court Justice Séamus Woulfe is a distinguished jurist of good repute. In 2020 he attended a social gathering at a golf club and was accused of breaching Ireland's strict Covid-19 pandemic rules. He was called upon to resign from the court. Woulfe issued an apology and submitted to an investigation by former Chief Justice Susan Denham. Denham concluded that Woulfe's attendance at the dinner had been ill-considered but he had broken no laws or guidelines and demanding his resignation would be unjust and disproportionate. In light of that, Justice Woulfe refuses to resign. Regardless, calls for his resignation continue.

"At all times": We require legal professionals to be people who not just pay lip-service to the rule of law but who lead by example, behaving with integrity, honesty and respect for the law not only in discharging their duties but also in the way they live privately. The Law Society of Ireland reminds solicitors that they are expected to observe and promote certain professional core values "at all times", notably honesty, independence, confidentiality and the duty to avoid conflicts of interest. The Law Society of Jersey states that members of the legal profession in Jersey must not "in their professional and personal lives" act in ways which brings, or may fairly bring, the legal profession in Jersey into disrepute. The Law Society of Scotland notes that solicitors "[…] must be trustworthy and act honestly at all times so that your personal integrity is beyond question."

Many other institutions regulating the legal profession across the world issue similar requirements. One reason is that law is arguably the dominant normative operating system which guides and determines how our society should function. It is not unreasonable to demand that lawyers are, and are perceived to be, fit and proper persons, trustworthy, discreet, independent in judgement and honest. This is even more important for judges, given the immense power judges are entrusted to exercise over the lives, property and civil liberties of all of us.

Too Demanding? Moral absolutism is the view that certain actions are always intrinsically right or wrong, good or bad, regardless of consequence or intention. Absolutism is the refuge of the puritan whose worldview demands black and white, right and wrong to be clearly determinable. Analysing moral absolutes, philosophers Plato, Thomas Aquinas and Gottfried Leibniz all pondered varieties of the same dilemma (known as the Euthyphro dilemma), namely whether something is good and just because God wills it so or does God will it because it is good and just? Aquinas thought that the Ten Commandments embodied unchangeable moral standards underpinning most of natural law and that not even God could change them. However, God could change what individuals might deserve in specific cases – not all killings or thefts may be equally wrong. A secular analysis can likewise determine that an absolutist position on compliance with moral or legal standards is unrealistic and probably unjust.

Lawyers are human beings and despite best efforts, they sometimes fall short without

meaning to. Laws themselves are not always clear either, context and facts matter and sometimes intentions and motivations do too.

What are Codes of Conduct for? Professional codes of conduct attempt to protect the legal profession as much as society at large from clear violations and untrustworthy persons, unfit to be active parts of the legal system. Lawyers who lie to clients, mislead the court, tamper with evidence, steal, assault, embezzle, defraud or abuse their position of trust are routinely disbarred. Judges who are, or are perceived to be, biased, intemperate, corrupt, mentally unstable or act without regard for the law need likewise to be removed or the entire justice system may lose society's trust and confidence. The standards legal professionals are expected to adhere to are very high indeed. Even minor violations that would not really affect most non-lawyers can end a lawyer's career: junior lawyer Adam Kemeny was struck off for dodging £650 worth of train fares, his junior status and remorse afforded him no clemency.

Separating Wheat From The Chaff! In the case of Séamus Woulfe, it appears that he was duly investigated and it was found that he broke no law and didn't deliberately violate pandemic guidelines either. The very public debate around his position and the scrutiny and humiliation that comes with it as well as the professional reprimand he may well get could be considered punishment enough. Thousands of people who aren't judges do worse every day and evade scrutiny entirely or simply ride it out unpunished – like Dominic Cummings. The legal profession and the general public must remain able to differentiate between a Brett Kavanaugh and a Séamus Woulfe. The former arguably should have stepped down or never have been confirmed and brings the US Supreme Court into disrepute just by sitting on the bench. The latter did something ill-considered but, assuming the Denham investigation was conducted fairly and properly, nothing illegal nor anything that could reasonably cast doubt on his suitability as a judge or good character. For a profession very much accustomed to human flaws and shortcomings, an absolutist, "holier than thou" approach is unhelpful and likely unsustainable. Lawyers and judges are rightly held to higher standards of behaviour but fairness and proportionality still matter.

Damages Arising From Malicious Prosecution - Notorious Daniel Morgan Murder

The Court of Appeal today (20/1/21) handed down their judgment in Rees v Commissioner of Police of the Metropolis [2021] EWCA Civ 49, in which the parties had sought to challenge the decision of Cheema-Grubb J to award Jonathan Rees £155,000 in damages for malicious prosecution and misfeasance in public office, following his misconceived and wrongful prosecution for the notorious and unsolved murder of Daniel Morgan on 10 March 1987. Rees and his co-accused Glenn Vian spent 682 days in prison, a significant period of which was in Category A, followed by a year with stringent bail conditions. Rees and his co-accused had sued the Metropolitan Police, but in a highly controversial judgment Mitting J. found that whilst the senior investigating officer had perverted the course of justice by concocting evidence against the men, that, (legally) deprived them of damages, as properly analysed it was a case of noble cause corruption. What mattered, when he fabricated the evidence of an eye witness was whether he believed the men were guilty, which he did. (The judgment can be found here) The Court of Appeal overturned the judgement and sent the case back for an assessment of damages.

Cheema Grubb's damages award included £60,000 for loss of liberty, £27,000 for distress arising from the prosecution, £18,000 for aggravated damages and £50,000 for exemplary damages (one third share of the overall exemplary damages award of £150,000). In his challenge to her award the Appellant argued that the judge had erroneously distinguished loss

The CCRC is still working on a number of other Post Office cases. Following the most recent referrals, we currently have 12 Post Office cases under review and we have received a further eight new applications which are being considered. The CCRC is aware that the Post Office has identified several hundred prosecutions brought since the Horizon system was installed and that the Post Office is looking at those cases to see whether the CCRC referrals and/ or the High Court judgments, have any implications for post-trial prosecution disclosure.

The CCRC's position is that if anyone believes their criminal conviction may be unsafe because of the impact on their case of problems with the Horizon computer system, they should consider challenging their conviction. If they have not already appealed and were convicted in a Crown Court or were convicted in a magistrates' court after pleading not guilty, they can still appeal in the normal way (seeking leave from the court where necessary). Guidance and the necessary forms can be found here: If they have already tried to appeal and failed, or pleaded guilty in a magistrates court (from where there is no right of appeal against conviction following a guilty plea), they should consider applying to the CCRC for a review of their Horizon-related conviction. Details of how to do so can be found on the CCRC website at www.ccrc.gov.uk

How is the Criminal Justice System Stacked Against Black Boys?

Transform Justice: When I discuss ethnic disproportionality in child prisons – pointing out that over half the children in custody are from BAME communities – people sometimes respond "but that must be because BAME children are accused and convicted of more serious crimes". Or "but BAME children live in poor communities, and it's their class rather than their race which effects outcomes". These explanations are possible, but I've never been convinced. If nine out of ten London children who are remanded are from BAME communities, it just seems pretty unlikely that their race has nothing to do with it.

A new report published by the Youth Justice Board nails the evidence and proves that race alone is a factor in sentencing and remand outcomes for children – something activists and others have been saying for a long, long time. The report is not a light read, but it is thorough. The researchers gathered data on thousands of English and Welsh cases, and information provided in practitioner assessments. They analysed all demographic information, the offences themselves, and the practitioner assessments, and worked out whether children from some BAME communities got different outcomes.

The disproportionality of outcomes "disappeared" in a number of scenarios when demographic and offence related factors were controlled for (eg the seriousness of the offence). But by no means all: Mixed ethnicity and black children were still more likely to be remanded in custody and, if not remanded, more likely to be subject to restrictions on bail. Black children were less likely to get a first tier (least punitive) court sentence and more likely to get sentenced to imprisonment. Black, Asian, and mixed ethnicity children were less likely to be diverted from prosecution through the use of out of court disposals.

This study shows clearly that outcomes for children from some ethnic minority communities, particularly black children, are more punitive. And this is only looking at the final stages of the criminal justice process – at children accused of/charged with crimes. Before they even get to that point there is a big discrepancy in stop and search and arrest rates. In 2019, black children were just over four times more likely to be arrested than white children.

This research doesn't explain why black and mixed ethnicity children end up being sanctioned/remanded/punished more harshly, but it does point to one area of concern – how prac-

Announcing the funding, the government reiterated its promise to cut the number of women in custody and provide effective support to deal with problems which could lead to crime in the first place or reoffending. But it admitted there could be a temporary rise of inmates in the near future as the number of investigations and prosecutions is expected to increase amid the hiring of 20,000 more police officers. It added that the number of women in custody has fallen by 10% since 2010 and stressed that government investment in community services should see this trend continue in the long-term. If the number of women in prison falls longer term, the MoJ says the new modern facilities will allow the Prison Service to close old accommodation.

Campaigners largely welcomed the announcement, but warned the efforts do not go far enough to tackle longstanding problems. Kate Paradine, chief executive of charity Women in Prison, said: "This pledge and funding are just the start, and a far cry from what is needed in order to provide stability for women who face the sharp end of our society." She called on the government in its upcoming Budget to safeguard the future of women's centres, which she described as an "anchor that stop women being swept up into crime" but warned were "facing a funding cliff edge in April". Emily Evison, policy officer at the Prison Reform Trust, said the plans would need to be backed up by "action on the ground to prove effective", adding: "Instead of planning for a rise (in women prisoners), the government should redouble its efforts to ensure women are not being sent to prison to serve pointless short sentences." Andrew Neilson, director of campaigns at the Howard League for Penal Reform, said: "If the goal is to reduce the number of women entering the criminal justice system, then today's announcement shows that ministers are looking at the issue down the wrong end of a telescope", claiming the funding promised was "dwarfed" by the cost of the extra prison places.

CCRC Refers Four More Post Office Horizon Cases

Criminal Cases Review Commission has referred the cases of a further four former Post Office workers for appeal. The referrals bring to 51 the number of cases to be sent for appeal so far on grounds related to the Horizon computer system. Two cases have been referred to the Court of Appeal and two to the Crown Court. The cases referred to the Court of Appeal are: Roger Allen, who pleaded guilty to theft at Norwich Crown Court on 7th April 2004 and was sentenced was six months' imprisonment1. Pamela Lock, who pleaded guilty to false accounting at Swansea Crown Court on 1st November 2001 and was sentenced to 80 hours of unpaid work and ordered to pay, £26,071.53 compensation and £500 costs. The cases referred to the Crown Court (because the convictions arose in a magistrates court) are: Oyeteju Adedayo who pleaded guilty to false accounting at Medway Magistrates' Court on 19th January 2006 and was sentenced to 50 weeks' imprisonment suspended for 24 months with 12 months of supervision and 200 hours of unpaid work. and Parmod Kalia who pleaded guilty to theft at Bromley Magistrates' Court on 17th December 2001 and was sentenced to six months' imprisonment at Croydon Crown Court on 8th March 2002.

All the CCRC referrals so far have been made on the basis of an abuse of process argument concerning issues with the Post Office's Horizon computer system which may have had an impact on the safety of the convictions. Then CCRC believes the argument gives rise to a real possibility that the appeal courts will quash these convictions. More details about the circumstances of the convictions and the reasons for the CCRC referrals are set out in our first Post Office referrals press release from from 26th March 2020 which can be seen here: CCRC to refer 39 Post Office cases on abuse of process argument | Criminal Cases Review Commission.

of liberty awards in immigration detention cases from those in a non-immigration context. He also took issue with the Judge's failure to award interest. The Respondent cross- appealed, challenging the Judge's award of exemplary damages. Whilst both parties lost their respective appeals, the Court of Appeal made a number of helpful observations, both in relation to loss of liberty damages cases and exemplary damages generally.

In particular: Awards in immigration detention awards should not be placed in a separate silo from awards in non-immigration cases. That said, the Court should exercise some caution in the use of comparators and not treat such cases without differentiation (paragraphs 28-29) Pre-judgment interest should not be awarded in cases involving damages for loss of liberty and malicious prosecution. However judges should award damages to both reflect intervening inflation and also to reflect the fact that the award of damages is being calculated by assessing the situation up to and as at the date of judgement (reflecting the time taken for a Claimant to be finally vindicated). It would be, further, good practice for a Judge to expressly state, albeit briefly, that that is what they have done (paragraphs 45 and 47) The absolute maximum for exemplary damages set out by the Court of Appeal in Thompson is not to be read in such a limited way and is, in any event, not directed at a case involving more than one Claimant. (paragraphs 53-54).

Terminating the 'Imprisonment for Public Protection' (IPP) License

Giovanni Di Stefano: It is somewhat unfortunate that prominent notices have not been issued by HM Prison & Probation Service or the Parole Board regarding the mechanism for terminating the "IPP" License which was scheduled to last 99 years. Those 2,000 or so prisoners that are still subject to serving the now long abolished IPP sentence and/or those who are subject to having being recalled, now have a window of opportunity to terminate their license. Under the Crime (Sentences) Act 1997 S.31A anyone subject to a sentence under the Criminal Justice Act 2003 S.225 (long ago abolished) and anyone in custody subject to having been recalled can apply to the Parole Board for consideration to be given to terminate their license ten years after their initial release, regardless of whether they have subsequently been recalled and re-released.

The State empowers the Parole Board - itself a creature of Statute - to terminate an IPP license. Rule 31 of the Parole Board Rules 2019 explains the mechanism with regard to the application. Applications for terminating the IPP License are to be made by the offender in proper or through his/her lawyer of choice. The application is directed to the Parole Board directly by simple letter/email or via the Community Offender Manager, commonly known as the 'outside Probation' officer. Once the application is received by the Parole Board notification is sent immediately to the PPCS (Public Protection at the MOJ) via a standard direction and provide a copy to the Applicant. The PPCS will then immediately notify the Community Offender Manager who must prepare an appropriate report that is added to the dossier of information that the Parole Board will need so that it can properly and fairly consider the application. Once the Parole Board receives the said dossier of information, it is duty-bound to carry out a risk assessment in a fair and just manner to establish whether the license can be terminated or whether there remains a requirement to protect the public.

The Parole Board are able to make either decision: 1) Terminate the License 2) Amend the License 3) Refuse the Applications. It follows that if the application is refused, it may he In the event an application is refused, it is subject to review every year. Once a license is terminated, the offender will not be subject to supervision or recall. Section 31A of the Crime (Sentences) Act 1997 was inserted by the Criminal Justice Act 2003 and has been amended by

S117(10)a of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and came into force in October 2020. Instructions on the termination of licenses holistically are set out in PI 08/2015 It should be noted that applications for consideration are not to be considered as a mere formality. There are a number of considerations.

Some of the considerations are set out herein: *The scale of progress over a ten year period including work carried out in the community * Previous progress noted by PPCS * Current circumstances and stability of lifestyle * Whether any recall decisions made and details of any progress * Current employment history * Current relationship history * Current risk to the public * Any known Multi-Agency Public Protection Arrangement (MAPPA) It should also be noted that if any victim is signed up to the Victim Contact Scheme, they will have a right to be notified of any application and entitled to submit an impact statement.

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Shooting of Farmer Paddy McElhone by British Army in 1974 Unjustified'

Michael McHugh, Belfast Telegraph: The shooting dead of a farmer by the Army in Northern Ireland in 1974 was “unjustified”, a coroner said. Paddy McElhone, 24, died near his home in Limehill, Pomeroy, Co Tyrone after sustaining a wound through the back fired by a soldier from the First Battalion, the Royal Regiment of Wales. The inquest into Mr McElhone’s death was the first in a series of coroners’ probes into deaths associated with Northern Ireland’s 30-year conflict.

It was held in Omagh courthouse in Co Tyrone. Presiding coroner Judge Siobhan Keegan said: “On any version of events the shooting was unjustified.” She added: “Paddy McElhone was an innocent man shot in cold blood without warning when he was no threat to anyone.” He was not on any list as associated with the IRA and was an innocent man from a humble background, evidence before the inquest showed. There is no dispute that he was shot by a soldier and that the person who shot him was Lance Corporal Roy Alun Jones, the coroner said. The victim had been working in the fields and had just returned home for his dinner when he was asked to go outside with members of an Army patrol. He was taken to a meadow and shot once, penetrating his chest and killing him instantly.

L/Cpl Jones was charged with murder on August 9 1974 and acquitted of that charge the following year by a judge who sat without a jury. Ms Keegan said the soldier had intended to shoot the victim and that there was no evidence he was running away. She added he was not acting in a threatening fashion or any way that justified shooting him. “This shooting has not been justified by the State.” She criticised the Army’s reaction at the time. “Military witnesses wanted to support their colleagues so information was not readily volunteered.” She praised members of the victim’s family for their dignity. “Patrick McElhone was a son and brother who tragically lost his life for no valid reason.”

This inquest, the second into Mr McElhone’s death, was directed by the Attorney General for Northern Ireland in December 2018 as a result of an application to him by Mr McElhone’s family. The coroner said he lived at home with his parents and was a quiet young man with a social life. She said the regiment was in the area to look for “anything or anyone” suspicious as part of general operations. Military witnesses’ evidence suggested a soldier wanted to question him and a cement lorry driver, who had just pulled up, together so sent his more junior colleague to get Mr McElhone back when the shooting happened.

There was no evidence the victim’s name was on any list of those associated with the IRA. He and his family were described by contemporaneous police accounts as law abiding.

Another member of the Army patrol who saw Mr McElhone earlier in the day in a field said he was a “pleasant young man” who did not arise suspicions. The coroner said she could find no valid reason why the soldier who shot him once and the unarmed victim were in the field. She added he was not acting in accordance with “yellow card” rules which governed the Army’s engagements. She made no finding on whether foul language and cheering was displayed by soldiers after the incident.

Ireland: Preliminary Trial Hearings to Become Law by Summer

Helen McEntee, Irish Legal News: Preliminary trial hearings will be introduced in Irish law for the first time by the summer under government plans announced today. The Criminal Procedure Bill 2021 will implement a recommendation raised in successive reports into the conduct of criminal trials in the State. The bill, which the government hopes to steer through the Oireachtas before the summer recess, has been developed in consultation with the Courts Service and the Director of Public Prosecutions.

Justice Minister Helen McEntee said: "Preliminary trial hearings will improve the operation of criminal trials, benefiting victims, the courts, defendants, witnesses and jury members. Trials are too often delayed or disrupted because issues which should be dealt with in advance, such as the admissibility of evidence, are subject to legal argument in the absence of the jury. Practical arrangements to determine the availability of witnesses will also help to speed up the process. This legislation will reduce the likelihood that a jury will be sent away immediately after being sworn in to allow for legal argument, or sent away multiple times during the trial. I am conscious of the very negative impact of Covid restrictions on criminal trials but this practical bill will support case management and help to ensure the parties are ready to proceed on the day of the trial. This will also deliver efficiencies as certain criminal trials will now have fewer delays. Delays to the start of a trial and multiple adjournments have huge negative impacts.

The trial process can be an incredibly stressful experience, and victims may have prepared themselves mentally for the trial to start on the designated day. When a trial is postponed at the last minute, or potentially interrupted multiple times for legal argument, this can make the victim’s experience all the more difficult. This legislation will importantly reduce the impact of numerous delays on victims of serious sexual offences. Pre-trial hearings will also mean that matters which could ultimately lead to the collapse of a trial can be identified before a jury is sworn in. Preventing lengthy legal argument mid-trial and helping to ensure that trials start when they are supposed to will deliver significant efficiencies and savings in the courts."

Upgrade for Cells in Women's Prisons

*BBC News:*Up to 500 new prison cells are to be built in women's jails, the Ministry of Justice has announced. These will be built in existing women's prisons to increase the number of single cells available and improve conditions. They will include in-cell showers, and some will enable women to have overnight visits with their children to prepare for life at home after release. In future, older cells could also be shut if the prison population reduces.

The Ministry of Justice (MoJ) has also pledged almost £2m in funding to 38 charities so their "vital work in steering women away from crime can continue". This may include addressing mental health problems and drug use, both of which affect around half of women in prison. Prisons minister Lucy Frazer said: "This funding boost will allow frontline services to continue the incredible work they do with some of the most vulnerable women in our society to prevent them being drawn into crime."